Testimony of M. Stuart Lynn

Before the

**Senate Committee on Commerce, Science and Transportation
Subcommittee on Science, Technology, and Space**

June 12, 2002

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear here today to discuss the ongoing process of reform and restructuring of the Internet Corporation for Assigned Names and Numbers (ICANN), which I have served as President and Chief Executive Officer since March of last year.

The timing of this hearing is opportune, because reform and restructuring are front and center of ICANN's agenda at its next round of meetings in late June, and thus I welcome input from you and other interested legislators. If ICANN is to succeed as a private-sector coordinating body, its structure and operation must deserve the strong support not only of the Administration, but of the U.S. Congress as well. I welcome today's hearing as a significant step in that dialogue.

The Debate Over ICANN

ICANN embodies a complex idea: an open and participatory non-governmental entity that seeks to balance widely diverse interests. Thus, ICANN is intended to be a lightning rod for loud and noisy debates, and considerable contention. In fact, in a very real sense that is a principal reason ICANN was created -- to establish a single forum in which all these varied interests, from around the globe, could come together and, where possible, arrive at consensus solutions to complex technical and policy issues essential to the continued stable operation of the Internet.

An observer in the Wall Street Journal recently noted that, to the uninitiated outsider, the intensity and obscurity of ICANN debates evoke the image of die-hard Star Trek fans arguing whether Captain Kirk could defeat Captain Picard. There is more than a grain of truth to that. But this fact -- that ICANN is intended to be a forum for discussion and debate, sometimes quite vigorous -- does not mean that ICANN should not or cannot operate effectively. ICANN's core values are fundamental to its character and legitimacy -- core values such as open participation (ensuring that all

interested parties have their say) and consensus (seeking wherever possible to arrive at commonly-agreed solutions). Taken to extremes, however, these can result – and, in my view, have too often resulted – in near-paralysis on important issues.

A central theme for my testimony today is the need for fundamental reform of ICANN's processes and procedures. A bottom-up policy development process like ICANN's must be fair, open, and transparent, but the procedures themselves cannot be allowed to prevent reaching decisions when consensus proves elusive or impossible. It is an unfortunate fact of life that consensus-based procedures can be abused to prevent effective and timely action by ICANN. To carry out its mission, ICANN must not become prisoner to the lowest common denominator of special interests but must seek out the technical or policy solution that best serves the global Internet community.

Finding the correct balance between these sometimes conflicting objectives is what the current reform and evolution process is all about. The debate was begun by the publication of my report to the ICANN Board in February of this year. That report, entitled "ICANN -- The Case For Reform," is attached to this testimony, and was the result of my evaluation of ICANN, its operations and processes during the first year of my tenure. It concluded that, despite considerable accomplishments to date, ICANN must continue to evolve in both structure and operation if it is to meet the more complex tasks facing it in the foreseeable future. I believe that deep, meaningful reforms are needed if ICANN is to continue to be as successful in the future as it has been to date.

I am very pleased that the call for a public debate on these issues has been embraced by virtually all ICANN participants, including the United States and other governments. Over the past few months we have seen a very productive dialogue develop in the ICANN community on exactly how best to address the problems that I identified (and which almost all the community agreed were indeed the key problems of ICANN). That dialogue is still ongoing, but it is beginning to coalesce around some essential concepts that I will discuss later in this testimony.

As is to be expected in a community of very different and opposing perspectives and interests, when presented with the opportunity for reform, some segments of the community retreat to the periphery to defend or advance their unique interests, offering appealing (but generally misguided) sound-bite arguments to water their own turf. You have heard or undoubtedly will hear many of these arguments, and will judge them appropriately.

But ICANN's job is to seek a common higher ground that melds these private interests with the greater interests of the global (including the United States) Internet community as a whole. I am proud that so many of our constituent bodies recognize this need. With your and their support, I am quite sure ICANN will evolve to where it can act effectively to further the stability and security of the Internet's naming and address allocation systems, while reflecting the patchwork quilt of so many participants in the process.

ICANN's Mission – Technical *and* Policy

Much of the debate has centered around ICANN's mission. What exactly is ICANN supposed to achieve? Simply put, it is ICANN's role to ensure that certain essential technical tasks are effectively performed for the benefit of the global Internet. But these technical functions cannot be performed in a policy vacuum. As was discussed in a recent working paper on "ICANN Mission and Core Values" (posted on the ICANN website and attached to this testimony), it is impossible to enter a new top level domain (TLD) into the root without answering serious policy questions: what name, who gets to operate it, for how long, under what conditions, and so forth. And how to reflect public interest concerns such as fair competition, privacy, intellectual property, and diversity? The answers to these questions have serious consequences. Simple "first come, first served" formulas are not solutions. Instead, what is needed is thoughtful, reasoned human judgment, bounded by clear, predictable and transparent rules, and informed by broad public consultation and input.

In short, ICANN must, as it was always intended to do and has done from its creation, address a limited set of policy issues directly related to its core mission – because they are inextricably intertwined with the technical tasks required by that mission. Indeed, everyone interested in this debate should ask themselves, "If not ICANN – rooted in community consensus as that term can best be defined – then who would perform these policy functions?"   The policy issues will not go away; they will not disappear simply because they are not "technical" by someone's definition. And policy issues that affect a global resource are not easily managed by any one national government.

Global interoperability requires global cooperation; this is not a luxury but a necessity. The fact that the Internet is a global resource is what drove the creation of ICANN in the first place. Tellingly, those who object to ICANN's policy role have offered little in the way of credible alternatives to deal with these inevitable policy issues, other than (1) the bureaucratic international treaty organization alternative

rejected in favor of the private sector model that became ICANN, or (2) alternatives that essentially lead to chaotic free-for-alls and the eventual destruction of globally unique naming.

To be blunt about it, some want ICANN to perform only those policy functions that hamstring their competitors but free them to do as they wish. It's understandable, but misguided. In a similar vein, you may hear words like "thick" and "thin" bandied around without real definition to describe various versions of ICANN. I do not find those terms particularly useful – you will generally find that a given interest wants ICANN to be "thin" where it wishes to avoid any oversight of its actions, and "thick" where it wants ICANN to enforce rules against someone else. In my view, ICANN should be as thin as possible, but thick enough to do its job.

ICANN: Private in the Public Interest

ICANN is, by deliberate choice of the United States and other world governments, and of the vast majority of private entities who expressed views on this subject, a *private sector* organization. The United States government, reflecting the very strong views of virtually everyone who participated in the debate that generated ICANN in 1998, concluded that the Internet's naming and addressing functions must be managed on a global basis, but quite consciously decided that handing this task over to an existing or new multinational governmental bureaucracy was not the right solution. And so it called for the creation of what became ICANN. In the view of most stakeholders, this decision was clearly correct; ICANN's growing pains pale beside the likely difficulties generated by giving some global multi-governmental organization the responsibility for management of such a dynamic resource.

ICANN is an organization rooted in the private sector and, in the view of most stakeholders, must remain that way. But the Internet has become too critical to the economies and social progress of the community of nations to ignore the important role that governments must play in ensuring that ICANN acts in the public interest as it addresses unavoidable but often divisive policy issues. That, indeed, is why you are holding these hearings today. You are rightly concerned about the public interests of the United States and its citizens, and the relationship of those public interests to those of the rest of the world community. Some may wish to ignore governments' role in furthering the public interest, bury it under six feet of bureaucratic jargon, or replace the vital role of governments with some kind of unworkable global "democracy" elected by and captive to a tiny minority of Internet users. I prefer that the key role of governments is fully seen in the light of day, and that we collectively and openly determine what kind of public/private partnership can

4

ensure that a private ICANN executes its core mission while respecting governmental concerns for the public interest.

During my tenure and before, ICANN has had a particularly constructive working relationship with the U.S. Department of Commerce. That agency has been sensitive to its unique role in this area, and we continue to work closely with the DOC and other representatives of national governments as we move forward toward an improved public/private partnership.

This notion of an improved public/private partnership was a critical part of my original "Case for Reform" document, and I proposed one possible way to accomplish this goal. But, as is often the case with ICANN, much better ways are being suggested as the dialogue progresses and the broader outlines of a restructured ICANN are taking shape.

ICANN's Reform on Track

Under these circumstances, this hearing is particularly timely. I came out of retirement to take on this responsibility, and agreed to do so for a two-year term that expires in March of 2003. I view the completion of the development of ICANN as my primary remaining task before I retire for the second time. I am committed to seeing this evolution essentially completed by the time my term ends, so that my successor can focus on the basic mission of ICANN. I believe this is well within our grasp. Reaching global consensus on this, like most other issues, requires patience and serious discussion, but we are well on our way to a satisfactory result.

I will not spell out in great detail the ongoing reform debate and the various proposals that are arising from it, since it is a work in process – much of which, like making sausage, is not always pretty. I am attaching three working papers that detail ideas published for community comment by the ICANN Committee on Evolution and Reform, appointed by the ICANN Board of Directors to coordinate the reform process, along with a useful introduction to ICANN's actual day-to-day responsibilities, called "What ICANN Does.". The important point is that the work is moving forward on a fast track, in full public view and with detailed input from the broad Internet community, including governments, non-governmental organizations, those directly and actively involved in ICANN, and the general public. We expect that the Board will adopt a blueprint for reform at its meeting at the end of June that will chart the main outlines of ICANN restructuring.

What will that blueprint look like? The Evolution and Reform Committee's most

recent documents, "ICANN Mission and Core Values " and "Recommendations for the Evolution and Reform of ICANN," capture much of the best thinking from the community. In broad terms, it would retain the bottom-up consensus development model that has been a core value of ICANN from the beginning. It would retain the fair, open and transparent character of ICANN processes. It would retain the geographic, functional and cultural diversity that has been a hallmark of ICANN since its creation. And it would retain the private sector model that sets ICANN apart from any other entity responsible for oversight of a critical global resource. But to enhance the effectiveness of ICANN, it would:

- fundamentally restructure the ICANN Board and supporting organizations to make them more effective and responsive;

- create more structured decision paths and better defined procedures that ensure open opportunities for input, and firm and predictable deadlines;

- create a system for continuing to populate the ICANN Board and our supporting organizations with people who can lead with credibility, effectively represent the broad public interest, *and* take proper account of the multiple interests of both providers and users of the Internet

- better integrate representatives of national governments into the ICANN policy development process as an important voice of the public interest; and

- strengthening confidence in the fairness of ICANN decision-making through (a) creating a workable mechanism for speedy independent review of ICANN Board actions by experienced arbitrators; (b) establishing an ombudsman function accountable directly to the Board; and (c) creating a full-time manager of public participation with the charge to ensure that those interested in providing input to ICANN's policy development process have the necessary information and mechanisms to provide that input.

While ICANN's structure and procedures are obviously important, two other major issues must also be addressed. ICANN must have a proper framework of agreements with all the key participants in the DNS infrastructure – those who operate the name root servers, those who allocate IP addresses, and the operators of the more than 250 TLD registries, including those who are responsible for the so-called "country code" or "ccTLD" registries. And ICANN must, of course, have a funding structure that is adequate to support its mission. As we come closer to consensus on ICANN structure and process, we must not lose sight of these critical building blocks to a successful ICANN.

ICANN Has Been Successful

I have devoted full time over the last year to learning what ICANN did well and where it needed to improve, talking and listening to understand the wide range of perspectives on these issues. And we should be clear: before my tenure (I emphasize this to be clear about my objectivity), ICANN has had some truly important accomplishments.

It successfully introduced competition into the name registration market; the result is more choice, better service, and lower prices – much lower prices – for consumers. Of course, opening a market to competition also opens it to sharp marketing practices, potential fraud, and all the other warts of a free marketplace. With adequate resources, ICANN can certainly do a better job of policing its agreements with accredited registrars, but for consumers who can now get for $10 or less in all sorts of varied packages something that used to have a single price ($70) for a single product (a two year registration), registrar competition -- warts and all -- looks pretty good.

ICANN successfully introduced the first global dispute resolution system for domain names (the Uniform Dispute Resolution Policy), which has demonstrated the value of innovative global solutions for this global medium. Imagine, if you will, the difficulty of pursuing and prosecuting cybersquatters in every nation on the planet, and compare that to a UDRP proceeding that costs very little, takes little time, and can provide a globally effective resolution. Of course, like any such system, an individual UDRP panelist will occasionally produce a decision that seems to make little sense, and this lack of perfection has caused some to criticize the entire system. But no system manned by imperfect human beings will ever be flawless. Indeed, no more than a handful of UDRP decisions have provoked sustained criticism, which is remarkable given that over 4,000 decisions have been rendered. The UDRP can surely be improved, but it stands as a truly major accomplishment for which ICANN deserves great credit.

Another major accomplishment for ICANN has been the introduction of the first new global Top Level Domains since the creation of the DNS. Seven new TLDs have now become operational over this past year: .biz, .info, .name, .pro, .museum, .coop, and .aero. This was a major undertaking. When ICANN was created, there was, for all intents and purposes, a monopoly provider of domain names to the public. In most of the world, including the United States, the .com top level domain or TLD (and, for some, .net and .org, operated by the same registry) was the only perceived domain name option. And there was something less than consensus

about how, and how fast, and even whether to change this situation.

ICANN served as the forum for debating these issues, pulling together those who wanted to allow anyone to operate as many TLDs as they desired (paying little attention to the many technical or other potential difficulties) and those who saw the addition of any new TLDs as unnecessary and undesirable, not serving any true public purpose and simply creating more burdens on business and risks of various kinds. The ICANN process eventually introduced these seven new and highly varied TLDs as a "proof of concept," with the notion that after evaluating the results the community would turn to the issue of whether and how and how many other new TLDs should be introduced. That process took longer than hoped, and the subsequent evaluation has been slowed by ICANN's ever-present resource limitations, but it is already obvious that any consideration of the introduction of more new TLDs will need to carefully address an number of issues, ranging from the proper role of ICANN to the realistic business prospects of new TLD registries. Still, these questions should not obscure the very real accomplishment of ICANN in producing for the public the first real global alternatives to the .com monopoly.

ICANN has had other accomplishments as well. There is no doubt that not all has been perfect, but it should hardly be a surprise that a new idea like this, staffed largely by volunteers – supported by a very small full-time staff – from around the globe with different perspectives, cultures and operating styles, would have some growing pains. ICANN is still an infant, not yet an adolescent, and certainly not an adult, and it still has some growing to do. The ongoing reform effort will speed ICANN's maturation.

Conclusion

This blend of accomplishment and unfinished development is what makes my job so interesting, and is why so many people of good will are still committed to making ICANN succeed. I came to this job with no baggage; I was not present at ICANN's creation, or even involved at all. I had no prior conceptions, and no need to defend the *status quo*. I will leave this job next March, so I have no ambition to build an empire. In other words, I am a free agent, able to offer ideas and thoughts based on their merit and the practical realities of what is needed to run an entity like ICANN.

But this freedom brings with it a real responsibility. I do not plan to end my short tenure at ICANN having failed to position ICANN so that it can move forward with confidence and stability into the future. I am committed to seeing this evolution through to a successful conclusion. I thank the members of the Subcommittee for

your time and interest in ICANN. Your input and support will help us achieve an effective private sector ICANN that truly serves the interests of the global Internet community.

Attachments:

APPENDIX A:
President's Report: ICANN – The Case for Reform
<http://www.icann.org/general/lynn-reform-proposal-24feb02.htm>

President's Report: ICANN – The Case for Reform

24 February 2002

To the Internet Community:

I have now been President of ICANN for just about a year. During that time, I have talked to more people than I can count about ICANN, its accomplishments and its deficiencies, and its future. I have also had the obligation to oversee the actual day-to-day operations of ICANN, and to make the hard decisions about what to do and how to do it in an environment of an incomplete structure and inadequate funding. I now feel comfortable enough with my state of knowledge that I want to share my views with the Board and the community. Attached to this note is a copy of the report I presented to the ICANN Board of Directors at its retreat in Washington, D.C. on February 23-24, 2002.

ICANN's assigned mission – to create an effective private sector policy development process capable of administrative and policy management of the Internet's naming and address allocation systems – was incredibly ambitious. Nothing like this had ever been done before. ICANN was to serve as an alternative to the traditional, pre-Internet model of a multinational governmental treaty organization. The hope was that a private-sector body would be like the Internet itself: more efficient – more nimble – more able to react promptly to a rapidly changing environment and, at the same time, more open to meaningful participation by more stakeholders, developing policies through bottom-up consensus. It was also expected that such an entity could be established, and become functional, faster than a multinational governmental body.

It is now more than three years since the creation of ICANN, and there are some real accomplishments: the introduction of a competitive registrar market, the Uniform Dispute Resolution Policy, the creation of seven new global Top Level Domains. But despite this progress, all the original expectations of ICANN have not been realized. ICANN is still not fully organized, and it is certainly not yet capable of shouldering the entire responsibility of global DNS management and coordination. ICANN has also not shown that it can be effective, nimble, and quick to react to problems. ICANN is overburdened with process, and at the same time underfunded and understaffed. For these and other more fundamental reasons, ICANN in its current form has not become the effective steward of the global Internet's naming and address allocation systems as conceived by its founders. Perhaps even more importantly, the passage of time has not increased the confidence that it can meet its original expectations and hopes.

APPENDIX B:
What ICANN Does
<http://www.icann.org/general/toward-mission-statement-07mar02.htm>

What ICANN Does

Posted: 7 March 2002
Revised: 10 March 2002

What ICANN Does

Staff Draft - Version 1.1 - 10 March 2002

OVERVIEW

The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for coordinating the Internet's naming, address allocation, and protocol parameter assignment systems. These systems enable globally unique and universally interoperable identifiers for the benefit of the Internet and its users.

These systems are highly distributed: hundreds of registries, registrars, and others, located around the world, play essential roles in providing naming and address allocation services for the Internet. ICANN's paramount concern is the stability of these remarkably robust services.

As overall coordinator of the Internet's systems of unique identifiers, ICANN's role, while defined and limited, includes both operational and policymaking functions.

Operations

In the operational sphere, the ICANN staff perform a range of day-to-day services, including:

(1) maintaining the DNS root zone file,

(2) allocating top-level blocks of IPv4 and IPv6 addresses and AS numbers to the regional Internet registries,

(3) maintaining 120+ registries of protocol port and parameter numbers,

(4) publishing online databases of information about the top-level domain registries included in the DNS root zone file,

(5) operating one of the thirteen authoritative DNS root name servers, and coordinating the overall DNS root name server system,

(6) publishing the InterNIC website and related functions,

(7) operating the .int registry,

(8) maintaining common/technical IP address spaces, such as the private-use address space,

(9) managing the reverse delegation namespace at the top level, and

(10) administering the DNS implementations of certain technical

Working Paper on ICANN Mission and Core Values

Posted: 6 May 2002

Committee on ICANN Evolution and Reform
Working Paper on ICANN Mission and Core Values

In an effort to advance the community discussions on ICANN evolution and reform that are now ongoing, we offer the following working paper on ICANN's mission and core values for further discussion. These are not conclusions, so these thoughts may or may not actually form the basis of specific recommendations to the Board or the community as a whole. We hope they do provide a platform for more detailed discussion by the community in the next few weeks. The most useful comments will be those received by 17 May 2002.

We invite the community to send comments on this working paper to reform-comments@icann.org.

Committee on ICANN Evolution and Reform
6 May 2002

ICANN Mission Statement

The Internet Corporation for Assigned Names and Numbers (ICANN) is the private-sector body responsible for coordinating the global Internet's systems of unique identifiers.

The mission of ICANN is to coordinate the stable operation of the Internet's unique identifier systems. In particular, ICANN:

1. Coordinates the allocation and assignment of three sets of unique identifiers for the Internet:

- Domain names (forming a system referred to as "DNS");

- Internet protocol (IP) addresses and autonomous system (AS) numbers; and

- Protocol port and parameter numbers.

2. Coordinates the operation and evolution of the DNS's root name server system.

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ICANN Core Values

In performing its mission, ICANN adheres to these core values and principles:

[a]. Preserve and enhance the operational stability, reliability, security, and global interoperability of the Internet.

[b]. Respect the creativity and innovation made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.

Recommendations for the Evolution and Reform of ICANN
Posted: 31 May 2002

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Committee on ICANN Evolution and Reform

Recommendations for the Evolution and Reform of ICANN

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Click here to submit a comment on these recommendations.
Comments should be made as far as possible in advance of the 24-28 June 2002 ICANN Bucharest meeting.

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Since 24 February 2002, when Stuart Lynn published his President's Report on ICANN Reform, there has been a very productive debate within the ICANN community on the issues raised in his report. ICANN is the embodiment of a complex idea, seeking to balance in a non-governmental entity widely diverse interests in a way that protects core values while maintaining the stability and interoperability of a critical global resource. The first period of over three years of its existence has seen some real accomplishments, accompanied by some wasted motion, false starts, and growing pains. Its accomplishments as a forum for global discussion and decisions on a limited set of concerns central to the operation of a global resource are real. But we also agree with Dr. Lynn that, in order for ICANN to be successful in the future, when it will face even more difficult challenges, it must evolve into a more effective entity.

Our charge was to receive input from the community on Dr. Lynn's Report, and to consider the suggestions contained in that Report along with the community reaction and any alternative suggestions that were advanced. We have diligently reviewed the extensive materials submitted to the Committee, and in addition have individually had many